

Update: Traffic Benchbook— Revised Edition, Volume 2

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.4 Search Warrants for Chemical Testing

A. Issuance of a Search Warrant — Substance and Procedures

4. Issuance of a Search Warrant by Electronic or Electromagnetic Devices

Replace the content of subsection 4 on page 2-23 with the following:

Effective October 17, 2003, 2003 PA 185 expanded the “electronic or electromagnetic means” by which an affidavit for a search warrant could be made and by which a search warrant could be issued to include “facsimile or over a computer network.”

MCL 780.651(2), as amended, provides:

“An affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network, if both of the following occur:

“(a) The judge or district court magistrate orally administers the oath or affirmation to an applicant for a search warrant who submits an affidavit under this subsection.

“(b) The affiant signs the affidavit. Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically transmitted facsimile of the signed affidavit or an electronic signature on an affidavit transmitted over a computer network.”

2003 PA 185 eliminated MCL 780.651(3)'s former provision regarding electronic transmission of a court order issued as a search warrant under MCL 257.625a. Effective October 17, 2003, MCL 780.651(3) states:

“A judge or district court magistrate may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network.”

The remaining provisions of MCL 780.651, as amended by 2003 PA 185, that are relevant to the use of electronic or electromagnetic devices in the issuance of search warrants provide:

“(4) The peace officer or department receiving an electronically or electromagnetically issued search warrant shall receive proof that the issuing judge or district court magistrate has signed the warrant before the warrant is executed. Proof that the issuing judge or district court magistrate has signed the warrant may consist of an electronically transmitted facsimile of the signed warrant or an electronic signature on a warrant transmitted over a computer network.

“(5) If an oath or affirmation is orally administered by electronic or electromagnetic means of communication under this section, the oath or affirmation is considered to be administered before the judge or district court magistrate.

“(6) If an affidavit for a search warrant is submitted by electronic or electromagnetic means of communication, or a search warrant is issued by electronic or electromagnetic means of communication, the transmitted copies of the affidavit or search warrant are duplicate originals of the affidavit or search warrant and are not required to contain an impression made by an impression seal.”